

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:18-cr-323-T-24AAS

FELIX ANTEQUERA RIVERA, JR.,

Defendant.

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ORDER

THIS CAUSE comes before the Court on Defendant Felix Antequera Rivera, Jr.’s Motion to Suppress Any and All Physical Evidence and/or Statements (Doc. 25), and the Government’s Response in Opposition (Doc. 35). Defendant contends that officers with the Lakeland Police Department (“LPD”) violated his Fourth Rights by stopping Defendant without reasonable suspicion, and by conducting a search and seizure of Defendant without probable cause. Defendant argues that both the firearm LPD officers removed from his pants following his arrest, and any and all related evidence, are fruits of the unconstitutional state arrest and should be suppressed. The Court, having carefully reviewed the parties’ submissions and having now conducted an evidentiary hearing on the matter on March 26, 2019, finds that the Motion must be denied for the reasons explained below.

I. Legal Standards

The Fourth Amendment permits police officers to stop and briefly detain individuals in order to investigate a reasonable suspicion that the individual has engaged or is about to engage in criminal activity. *Terry v. Ohio*, 392, U.S. 1 (1968). Reasonable suspicion “requires at least a minimal level of objective justification for making the stop.” *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). A law

enforcement officer meets the “reasonable suspicion” standard when he or she “has a particularized and objective basis to suspect a person of criminal activity.” *United States v. Baker*, 599 F. App’x 904, 905 (11th Cir. 2015). Courts determine whether reasonable suspicion exists by evaluating the totality of the circumstances from the perspective of an objectively reasonable police officer, giving due weight to the officer’s experience. *Id.* at 905.

“A person is seized by the police and thus entitled to challenge the government’s action under the Fourth Amendment when the officer, ‘by means of physical force or show of authority,’ terminates or restrains his freedom of movement.” *Brendlin v. California*, 551 U.S. 249, 254 (2007) (quoting *Florida v. Bostick*, 501 U.S. 429, 434, (1991)). Seizure by physical force happens “when there is a governmental termination of freedom of movement through means intentionally applied. *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989). If the police have lawfully arrested a suspect, then they may properly conduct, incident to that custodial arrest, a full search of the person. *United States v. Bailey*, 691 F.2d 1009, 1018 (11th Cir. 1982) (citing *Gustafson v. Florida*, 414 U.S. 260, 266 (1973); *United States v. Robinson*, 414 U.S. 218, 235 (1973)). This type of search is reasonable under the Fourth Amendment to protect law enforcement officers from any concealed weapons the suspect may have, to prevent the suspect from destroying evidence, and to prevent the suspect from retaining contraband while in custody. *Id.*

II. Discussion

A. *Terry* Stop

In the instant case, the Court finds LPD Officers Nicholas Rex and Eric Mathers had articulable reasonable suspicion that Defendant was engaged in criminal activity, and therefore, were allowed to conduct an investigatory stop. First, both officers testified that the Lakewood Terrace apartments were situated in a high crime area. Specifically, building “G” was especially known to

Officer Rex as a building where many gun complaints were reported. Second, both Officers knew Defendant's background, and could recognize him by either having previously stopped him or having been shown his photograph. Specifically, Officer Rex previously issued Defendant a "Notice to Appear," and had been told by a fellow police officer that Defendant was on felony probation with a curfew. Officer Rex's understanding of probationary curfews is that they usually begin at 10 or 11pm. At the time the Officers spotted Defendant near building "G" it was after 11pm. Third, both Officers knew Defendant was not a resident of the Lakewood Terrace apartments. LPD patrolled the apartment complex at the manager's request and had been granted authority to issue trespass warnings. Along with that authority, the management provided LPD with a list of residents, and non-residents were not permitted in the complex after dark unless accompanied by a resident. Finally, when Officers Rex and Mathers saw Defendant standing near building G, they noticed a heavy bulge in the front waist-band of his pants. The object created a bulge past the top of the waist band making it visible underneath Defendant's fitted shirt. The Officers also saw Defendant reach down to adjust the object, which appeared to have weight to it. The bulge appeared to these experienced Officers to be a firearm.

When the Officers began to approach Defendant in their police car, it appeared to them that Defendant recognized their car and immediately turned his body away from it. Defendant then put his arm around an unknown female and, both Officers testified, began to walk quickly away from them. When the Officers could no longer drive in Defendant's direction due to the apartment buildings blocking the driving path, Officer Rex exited the police car and followed Defendant on foot around building G into a breezeway. Defendant appeared to be headed for the front door of a residence. Officer Rex testified that he yelled for Defendant to "stop," and identified himself as a Lakeland Police Officer. Defendant did not stop and instead tried to enter a closed door. Officer Rex

grabbed the top of Defendant's backpack and pulled him away from the doorway. Officer Rex told Defendant to keep the backpack on and come with him. Defendant then suddenly took off the backpack and ran. A scuffle ensued as Officer Rex chased and tackled Defendant to the ground attempting to place him under arrest. Defendant resisted and Officer Mathers had to assist Officer Rex, while two others were called for backup. Defendant actively resisted and the Officers were forced to employ a taser gun.

Given the above, the Officers had several grounds for reasonable suspicion that Defendant was engaged in criminal activity: 1) he was in violation of his felony probation by being out past curfew; 2) he was trespassing; 3) the heavy bulge in Defendant's front waistband gave Officers reason to believe he was carrying a gun and they knew him to be a convicted felon; and 4) Defendant did not obey Officer Rex's verbal commands to stop. Considering the totality of the circumstances from the perspective of Officers Rex and Mathers, there was articulable reasonable suspicion that Defendant was engaged in criminal activity and, therefore, conducting an investigatory stop did not violate Defendant's Fourth Amendment rights.

B. Search and Seizure

With respect to the search and seizure of the firearm and ammunition, Officers Rex and Mathers detained Defendant, based on his resisting arrest with violence and battery on a law enforcement officer, and were entitled to search Defendant incident to the arrest and detention. Officer Rex testified that after Defendant was in custody and handcuffed against the outside of the police car, Officer Rex uncovered a loaded firearm in the front of Defendant's pants.

Given the above, Defendant's Motion to Suppress the firearm, ammunition and any and all related evidence, including statements, is denied.

ACCORDINGLY, it is ORDERED AND ADJUDGED:

Defendant Felix Antequera Rivera, Jr.'s Motion to Suppress (Doc. 25) is **DENIED**.

DONE AND ORDERED at Tampa, Florida, this 28th day of March, 2019.


SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record